

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

December 2004

HOLIDAY HANGUPS

Despite what you may have heard, Christmas is not a four letter word.

In fact, teachers can use the word in their classrooms, along with related decorations and carols, <u>as</u> <u>long as there is a legitimate</u>

educational purpose in the displays, songs and discussions.

That means that Christmas decorations are allowed as part of a display that relates to the curriculum.

Many educators try to create a universal arrangement of Christmas, Chanukah and Kwanzaa decorations, with a few snowmen thrown in to highlight

the nondenominational theme. Attempts to ac-

commodate all

may border on the ridiculous, however, and should be tempered with the understanding that holiday décor and activities need not be allinclusive, but must be educational.

For instance, geography teachers can discuss the

Christmas story from a cultural perspective, as long as the educators do not delve into their personal beliefs about the truth or importance of the

story.

Choir and band teachers can similarly use Christmas music in their holiday concerts, including secular music.

There is no absolute bar on singing
Silent Night, as long as the teacher can point to some educational value in the song; i.e., it is musically challenging.

other religiously-based holidays is not drawn, as some insist, to keep religion out of schools. It is drawn to keep the schools from sending the message to their students that one religion is better than an-

Such a message can be devastating for a young student who is already a religious minority in the school, and does not serve any legitimate educational purpose.

Teaching students about the wide array of beliefs and cultural celebrations, and the historical roots of those celebrations, is a

legitimate educational purpose. It can easily be achieved without degrading any student's beliefs or making a student feel excluded.

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UPPAC CASES

- The Utah State Board of Education accepted a Stipulated
 Agreement suspending the
 license of Rebecca Smith. The
 suspension follows Ms.
 Smith's conviction for Third
 Degree Felony Retail Theft.
- The State Board accepted a Stipulated Agreement for revocation of Mark Thiele's license. The revocation results from Thiele's sexual relationship with a student.
- The State Board accepted a Stipulated Agreement suspending the license of Justin Decol for 18 months. The suspension results from Decol's relationship with a student.



A new category of educator misconduct has cropped up across the nation.

Blame it on NCLB, but educators feeling the pressure to get and stay licensed are increasingly using dubious methods to meet licensing requirements.

The Utah State Board of Education, for example,

revoked the license of an educator based on his failure to disclose that his license in another state was suspended.

We are not the only state to do so. In Oliver v. Lee County School Dist., (Ga.App.) the court upheld a principal's dismissal from employment for similar ac-

tions.

other.

The Professional Standards Commission denied the principal's application for a Georgia educator's certificate based on his failure to disclose his criminal and employment history. The court found termination of the principal's employment contract

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Eye On Legislation

Happy holidays and heads up—here's what lies in store for education when the Legislature begins its annual festivities in January.

TUITION TAX CREDITS: Armed with a new study showing cost savings for education (the only state in the nation to make such a finding) Legislators are rapidly drafting yet another bill to funnel public dollars into private schools.

VOUCHERS: The Carson Smith bill will also make a repeat performance this year. The bill would provide public money for parents of disabled students to send their kids to private schools.

The bill was vetoed by Governor Walker last year, but Gov. Huntsman has already pledged his support.

No word yet on whether the flaws of the last bill, a notable lack of any requirements that the private schools have any accountability for the educational needs of the students or the public funds used on their behalf, will be rectified this year.

COOKIE CUTTER SCHOOLS: A legislative task force rightly determined that onesize fits all school buildings were not the best means to ensure tax dollars are well spent. A few legislators, however, have promised to continue the fight for big box school houses.

Legislators promoting the cookie cutter theory of architecture have not indicated any willingness to use similar cost-saving methods for future redesigns of the capitol, or whether any of them will be foregoing the new, cherry wood-laced offices with secure parking facilities provided for their part-time work at the Legislature.

PARENTS VS. CHILDREN: While some legislators will be pushing to make it even harder to prevent child abuse, another will be trying to grant "throwaways" the rights they need to live on their own.

Battle lines are already being drawn over proposed legislation that would require a finding of abuse "beyond a reasonable doubt" before the Division of Child and Family Services can substantiate a report of abuse.

Many of the same players are also taking stands on either side of another bill that would give 16-year olds who have been tossed out by their parents or escaped from abusive situations the ability to be declared "emancipated" by a juvenile court. The designation would give the minor legal rights otherwise held by the absentee parents.

Recent Education Cases

Medley v. Board of Educ., (Ky. App. 2004). Videotapes of a teacher's classroom were "education records" within the meaning of the Family Educational Rights and Privacy Act and the Kentucky Family Educational Rights and Privacy Act. Following student complaints, video cameras were placed in the teacher's classroom. She requested the tapes so she could evaluate her own performance.

The Board denied her request, claiming the tapes were education back to the district court for a

records.

The Court of Appeals agreed that the tapes were education records, but also found that there was insufficient evidence whether the teacher

had a legitimate educational reason for viewing the tapes.

The court remanded the matter

trial on whether the teacher should have been granted access under the FERPA exception for educators with a legitimate educational interest in the records.

Biby v. Board of Regents of Neb. at Lincoln, (D.Neb.

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UPPAC cases cont.

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was justified by this denial.

A teacher in Texas tried another tact to get past certification requirements in his state. This teacher suffered from depression and claimed the district had wrongfully terminated him based on his disability.

The district terminated the educator for failing to meet the deadline for becoming certified. The educator claimed he was entitled to an extension of the dead-

line as a reasonable accommodation for his depression under the Americans with Disabilities Act.



The court disagreed. The district, it ruled, had no power to make such an accommodation since state law requires that educators have a license.

Alexis v. Dallas Independent Sch. Dist., (N.D. Tex 2004).

Utah law prohibits the State

Board from issuing a license to anyone who has a suspended or revoked license in another state. It also requires educators to have the appropriate license to work in the public schools.

NCLB may exacerbate the problem, but the decision to lie on an application or ignore licensing requirements rests solely with the educator. Doing so may result in termination of employment and suspension or revocation of the educator's license.

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UPPAC Member Profile—JoAnn Handy

JoAnn Handy is in her 31st year as an educator. She currently teaches a sixth grade eMINTS class at Roosevelt Middle School.

Ms. Handy has experienced the trials and triumphs of teaching in Duchesne and Uintah Districts, and Yokohama, Japan.

She has also worked in Germany and Japan as a secretary for the U. S. Army and Navy and at the Pentagon for the U.S. Air Force.

Like so many educators, Ms. Handy is a lifelong learner. She is currently working on her master's degree in education, and constantly learns from her sixth graders; "it's great to have book discussions with bright sixth graders and hear their recommendations and opinions concerning their reading."

Ms. Handy also learns from her service on the Commission. Ms. Handy serve on the commission as a teacher



JoAnn Handy

representative and a representative of a more rural area. She notes that "the great people I work with on the Commission have taught me so much. It has been enlightening to share experiences with educators throughout the state. They are outstanding representatives of the profession!"

In addition to teaching and serving on the Commission, Ms. Handy is the local Legion Auxiliary Girls State Chairman and is a hospital volunteer.

Ms. Handy enjoys spending time with her son and his family and traveling, especially to Disneyland. She will start the holidays off right by taking her three granddaughters for their traditional excursion to see Ballet West's Nutcracker.

Your Questions

Q: When can a student miss school and be excused for the absence?
A: Excused and unexcused absences are largely defined by districts.

Most districts allow a student a certain number of excused absences. Absences are termed excused for specific reasons, such as illness, doctor's appointments, or extracurricular obligations.

Unexcused absences usually include family trips to Disney World, ski days, or other activities that

What do you do when...?

could be scheduled at another time.

A student who is absent, without an approved excuse, for more than 10 days is taken from the school's rolls and must be treated as a habitual truant.

Districts have policies to determine

truancy and the steps to follow if a student does have excessive unexcused absences.

Q: Must a school release the names and addresses of its students to another school?

A: This issue has been raised a number of times by schools and districts concerned about charter schools recruiting students from their schools.

If a school or district has sent out
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Recent Cases Cont.

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2004). A university acted properly when it conducted a search of an employee's computer files without the employee's written consent. The computer belongs to the school and the search was related the school's legitimate interest in obtaining documents for litigation and investigating improper use by the employee.

In keeping with the holiday theme, teachers will be glad to hear that a teacher's termination for pushing a candy-crazed student back from the candy bowl

was overturned by a Florida court. Packer v. Orange

County School Bd., (Fla. App. 5 Dist. 2004).

The teacher told the elementary student several times to "back off." The student persisted, plunging his hand into the candy bowl as other kids rushed for the teacher.

Witnesses established that the teacher was not angry or agitated when he placed his hand on the kid's shoulder and pushed him one or two steps back.

The school board terminated the teacher, in contradiction to the recommendations of a hearing officer. The court finding the board's witness less than credible, reinstated the hearing officer's original decision not to terminate.



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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions Cont.

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its annual FERPA notice, and included names and addresses in its definition of directory information, the school can provide the names and addresses to another school.

The school is not required to do so, but it may do so without prior parental notice or consent.

Continually denying a charter school access to names and addresses, however, may not be the best way to build a working relationship with a fellow public school. A better approach may be to provide the requested information, and request information in return.

Schools and districts need to have a good sense of enrollment counts for the following school year in order to budget time and resources effectively. The schools could certainly benefit from knowing who has enrolled in a charter school for the next year and who is being targeted for enrollment.

Cooperation between charter and traditional public schools may be far more useful in the long run than any short term satisfaction a school may get from denying a charter access to student names and addresses.

Q: Can students be given credit for seminary?
A: If a district chooses to do so. However, allowing students to gain credits for seminary opens a number of doors districts may prefer to keep shut.

A district can not look into the curriculum of a seminary (or any religion's) class to determine if it has academic merit. Once it agrees to accept the credit, that is all the district can do—accept the credits as given by the seminary teachers.

A school must also give credit to any other program students might attend during release time. The district can not discriminate against students based on the

view points expressed in a release time activity. Once the district starts giving credit for seminary, it must also give credit to students regardless of whether they attend a Wicca Coven,

Bible study group, Satanic worship circle, or Tomb Raider Players Club meeting.

Religion credits from accredited parochial schools are currently accepted by school districts. The key term, however, is not religion, but accredited. State rules allow districts to accept any credits earned at an accredited institu-